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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,127	08/30/2006	Jacques Thomasset	2590-167	7341
23117 7590 06/11/2008 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER				
WOOD, ELLEN S				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
06/11/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/591,127

**Applicant(s)**

THOMASSET, JACQUES

**Examiner**

ELLEN S. WOOD

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08/30/2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 02/02/2007; 08/30/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 10/591116 and claims 1-13 of copending Application No. 10/591126. Although the conflicting claims are not identical, they are not patentably distinct from each other because they recite a multilayer dose that consist of a body of revolution, plurality of layers including a functional layer, adhesive and barrier layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Akiyama et al. (US 2002/0182351, hereinafter "Akiyama").

In regards to claims 1-5, Akiyama discloses a multilayer parison which is the claimed "dose" of the applicant [0122]. The parting line (23) is defined as the axis of symmetry [fig. 11 0118]. A multilayer parison (dose) is formed from co-extruding resins to form a multilayer flow [0122]. The resin layers comprise a cylindrical outer layer, a cylindrical inner layer located inside the outer layer, a pair of the vertical slip-like adhesive layers disposed in axial symmetry on the parting line, and the cylindrical ring-like adhesive layer that is disposed between the outer layer and the inner layer intermittently at a predetermined interval [0122 and fig. 11]. Figure 11 shows a body of revolution defined about a said axis of symmetry (23), the body of revolution comprises two ends disposed in a direction parallel to the axis of symmetry (fig. 11). The layers consist of inner and outer layers of PET with a middle layer of polyamide or ethylene vinyl alcohol [0111 and fig. 7]. The polyamide or ethylene vinyl alcohol is imprisoned between two layers of adhesive resin [0111 and fig. 7]. Thus, the functional layer is the barrier layer imprisoned between the two layers of adhesive resin. It is known to one of

ordinary skill in the art that ethylene vinyl alcohol and polyamide are commonly known barrier resins used in packages and containers.

In regards to claim 6, Akiyama discloses that the object obtained formed from the parison has an inner face and outer face, where the inner part of the packaging [0111]. The object is formed from the multilayer structure of the varying resin layers [0111 and fig. 7]. The functional layer is imprisoned in the wall and forms a fold, wherein the functional layer is not contained within the inner face [0111 and fig. 7].

In regards to claims 7-11, Akiyama discloses a multilayer parison production method is where resins are coextruded as to form a multilayer flow and said flow being periodically cut so as to form individual parisons [0122-0124]. The flow is pinches off the multi-layer parison during the cutting, thus the parison portions are deformed in a way to cover the barrier and adhesive layers within the PET layer p0124].

Akiyama is silent with regards to the compression molding, the distance of the functional layers from the surface of the parison, the characteristics of the functional layer and were the portions are deformed during the method.

Akiyama discloses blow molding the parisons [0126]. It would be obvious to one of ordinary skill in the art that containers can be formed using a wide variety of differing methods. The parison used for these methods would be similar because the object is to shape the parison to form a container with multiple layers. Thus, the compression molding is intended use of the parisons.

Akiyama discloses that barrier and adhesive layers are disposed at a predetermined interval [0122]. Thus, it would be obvious to one of ordinary skill in the

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art that the spacing of the functional layer in comparison to the surface of the parison and whether the ends are open or closed would be determined by routine experimentation in order to produce the most effective parison that will easily shape into a container that exhibits proper barrier properties.

It would be obvious to one of ordinary skill in the art that the deforming of the parisons would occur with the parisons are transferred to the mold, because inserting the parison into a chamber that is of a certain mold would deform the outer appearance of the parison. Also, as the parison is molded the parison deforms into the shape of the article, thus the parisons are deformed once they are in the mold.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELLEN S. WOOD whose telephone number is (571)270-3450. The examiner can normally be reached on Monday-Friday 7-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ellen S Wood  
Examiner  
Art Unit 1794

/Carol Chaney/  
Supervisory Patent Examiner, Art Unit 1794